TEXAS DEPARTMENT OF MOTOR VEHICLES

BOARD MEETING

10:05 a.m. Thursday, June 10, 2010

Ric Williamson Hearing Room
Dewitt Greer Building
125 East 11th Street
Austin, Texas

BOARD MEMBERS:

Victor Vandergriff, Chair Cliff Butler Jim Campbell Ramsay Gillman Cheryl E. Johnson Janet Marzett Victor Rodriguez Marvin Rush Johnny Walker

STAFF MEMBERS:

Ed Serna, Executive Director Brett Bray, General Counsel





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ON THE RECORD REPORTING (512) 450-0342



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1. Public Comment

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 - 10-0371 ENF Wyly Franklin Sims, DBA Carl Sims & Sons
- 6. ADJOURNMENT 72



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PROCEEDINGS

MR. VANDERGRIFF: Good morning.

Victor Vandergriff and I'm pleased to welcome you here
today to the June 10 meeting of the Board of the
Department of Motor Vehicles. I am now calling the
meeting for June 10, 2010 of the Board of the Texas
Department of Motor Vehicles to order, and I want to note

for the record that the public notice of this meeting,

containing all items on the agenda, was filed with the

Office of Secretary of State on June 1, 2010.

Before we begin today's meeting, please place all cell phones and other communication devices in the silent mode. And if you wish to address the board during today's meeting, please complete a speaker's card at the registration table in the lobby. to comment on an agenda item, please complete a yellow card and identify the agenda item; if it is not an agenda item, we will take your comments during the public comment portion of the meeting which will follow shortly.

Now I'd like to have a roll call, please, of the board members. Board Member Butler?

(No response.)

MR. VANDERGRIFF: Mr. Butler is absent today, as is Board Member Marzett.

Board Member Campbell?

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1	MR. CAMPBELL: Here.
2	MR. VANDERGRIFF: Board Member Gillman?
3	MR. GILLMAN: Here.
4	MR. VANDERGRIFF: Vice Chair Johnson?
5	MS. JOHNSON: Here.
6	MR. VANDERGRIFF: Board Member Rodriguez?
7	MR. RODRIGUEZ: Here.
8	MR. VANDERGRIFF: Board Member Rush?
9	MR. RUSH: Here.
10	MR. VANDERGRIFF: Board Member Walker?
11	MR. WALKER: Here.
12	MR. VANDERGRIFF: And let the record reflect
13	that I, Victor Vandergriff, am here too.
14	We do have a quorum, and with that, I will move
15	into the public comment portion of today's agenda. Is
16	there anybody from the public who wishes just to speak in
17	general?
18	(No response.)
19	MR. VANDERGRIFF: Seeing none, I'll move into
20	the briefings, and we do have some briefings primarily
21	from our executive director. I will tell you that the
22	Quarterly Report that the board saw a draft of at last
23	month's meeting was filed, late but it was filed, and then
24	we will have a June Quarterly Report which I will get out

to the board before the end of the month from the board

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chair.

2.

And as far as stakeholder meetings and industry information, I will let Mr. Serna address some of those that the staff has attended and we'll do that here shortly.

With that, I will turn it over to Mr. Serna, and you might want to introduce the Fiscal Update.

MR. SERNA: I'll ask Linda Flores to come up and provide us with the Fiscal Update. You may recall, last time it was a little bit more complicated in that we talked about the development plans for the Legislative Appropriations Request.

This will be more standard with regard to being a fiscal update and simply provide information to the board regarding our current financial status. I think she's handing out the report now.

One thing to note, and the reason this wasn't included in your board book in advance is in addition to preparing the 2010 expenditure overview -- and I'll get into this a little bit later but I wanted to explain why this wasn't in the board book -- Linda is also in the process of trying to get some financial vacancies posted, she's working on portions of the agency's Strategic Plan and already preliminary pieces of the Legislative Appropriations Request and the 2011 operating budget, so

she's got a little bit on her plate.

2.

So we apologize for this not being in the board book in advance, and we'll make sure it gets there by the next board meeting to be included in the book.

So with that, I'll hand it over to Linda.

MS. FLORES: What I handed out shortly was the expenditures that we incurred through May. As you can see as we've been progressing through the fiscal year, our expenditures are increasing, so we've spent approximately \$80 million through the end of May. Our year-to-date elapsed is about 75 percent of the year is gone and we still have over 50 percent available budget, but as you all know, that incorporates the Texas Insurance Verification Project, over \$3 million, and Vision 21, over \$31 million, so those things still have to be expended.

The bottom portion of the spreadsheet shows how central administration salaries have been charged, so as central administration grows, our salary expenditures will continue to grow. And we receive a transfer from TxDOT so every month we have to notify them who's been hired and what our salary costs are and they transfer the like amount to us, and that's every month.

And with that, that concludes the expenditure update.

MR. SERNA: One thing I want to add with regard



to the expenditures, that two items that Linda mentioned, the most significant items, Vision 21 and the Texas Sure, it is unlikely that we will spend anywhere near the appropriated amount for Vision 21 in this fiscal year, but the unused funds will roll over into the next fiscal year.

2.

I didn't want to leave the board with the impression that you're going to see a big spike in expenditures in the last three or four months in the fiscal year; while there may be more expenditures in that area, it's not going to be, I don't believe, to the tune of \$60 million.

And then also I wanted to assure the board that that money wouldn't lapse, that it would roll forward so that can continue to plan for that project in a sort of organized fashion. Same thing with Texas Sure.

MR. RODRIGUEZ: Question, Ed, on this, recognizing the carryforward, my question is will any of that be subject to the reductions that we're being asked at this point in time to proffer?

MR. SERNA: No, sir. Let me address both reductions, the 5 percent and then the pending 10 percent, both of those are targeted at general revenue, Fund 1, and I believe that the sources for both Texas Sure and Vision 21 are Fund 6, and Fund 6 has not been included in the upcoming reductions.

However, if the instructions from the legislature or the Governor's Office change to include Fund 6, then those would be affected as well because we would look across the board, but right now they are not.

MR. VANDERGRIFF: Linda, a question for you.

I'm assuming, obviously, that other operating expenses includes the Vision 21 and the Texas Insurance

Verification Project, so all that money is budgeted in that, it hasn't been expended but that's where you put it for purposes of this report. Correct?

MS. FLORES: Correct.

MR. VANDERGRIFF: So I'm just curious, if you kind of added up the math, again, I'm not sure, but I'm assuming very little of the Vision 21 money has been spent at this point, there's still a significant amount left, and I'm not sure about the Texas Insurance Verification Project, how much of that has been spent.

But I guess I'm getting concerned if we're spending at a rate of \$4- or \$5 million a month out of that which we now appear to be actually \$5-1/2 million a month in that area and we've got roughly \$46 million left, I don't even know what's in this category or what else in detail here, but are we going to run out of money to fund whatever else is in here.

MS. FLORES: No, sir. Those two projects have



1	their own appropriation budget.
2	MR. VANDERGRIFF: So they're not included in
3	your sheet here?
4	MS. FLORES: They are included, but they're
5	labeled specifically for those things.
6	MR. VANDERGRIFF: I understand that, but I'm
7	just curious if you take those two out, I'm not sure,
8	again, how much has been spent out of those two funds, but
9	if you added them up at the moment, you've got roughly \$34
LO	million in just those two and you've got \$46 million left
L1	and you're spending at the rate of now tracing \$5.5
L2	million through May, so you've got seven months.
L3	Again, I'm not sure how much is left of that
L4	\$34 million that's still in there on the budgeted side.
L5	Do you follow my thought process? I'm worried that we're
L6	spending money.
L7	MS. FLORES: Yes, sir, that we're going to run
L8	out.
L9	MR. VANDERGRIFF: Yes. And I'm not even sure
20	what we're spending in here.
21	MS. FLORES: Well, I do have some detail on the
22	other expenses, it does include items such as postage and
23	subscriptions. I can e-mail you specifically what's been
24	spent in those objects.



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MR. VANDERGRIFF: That would be helpful.

1 MR. SERNA: Mr. Chairman, two things. First of all, what we'll do in the next expenditure report is we 2 will have more detail breakdown of some of the what I'll 3 4 call the lump sum categories, including the other 5 operating expense so you can kind of see what those are. 6 Second, while not all the money for Vision 21 or Texas Sure will be spent this fiscal year, monies have 7 been spent, so some of the expenditures in the previous 8 9 months includes a draw down on those funds, so it's not quite the simple math of subtracting the appropriated 10

MR. VANDERGRIFF: I understand.

amounts.

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MR. SERNA: But we will provide the detail on other operating and professional services, the two biggest lumps -- what I'm calling lumps, I apologize -- to the board in the next report, but Linda will e-mail it out subsequent to this meeting for this report.

MR. VANDERGRIFF: Any other questions from members of the board?

MR. WALKER: I have one. The building rent in the month of February was like ten times what it is the rest of the months, and then why wouldn't building rent track fairly consistently since it's a pretty fixed cost; it's a variable all over from \$35,000 a month to \$17,000.

MS. FLORES: I believe there was a payment made



in the month of February that was part of the memorandum of understanding, and so there was a one-time expenditure.

And I'll let Dawn back me up on that one.

MR. SERNA: Dawn was here at the time that occurred; it was before Linda got here.

2.

MS. HEIKKILA: For the record, my name is Dawn Heikkila, chief operating officer.

The rent payment in the memorandum of understanding was a lump sum one-time made to TxDOT from DMV, transferred appropriations, and it was to cover the lease space for the Riverside campus, the office areas that we occupy over there.

And the reason that it was done this way is that those funds -- had the divisions not transferred to the DMV and had stayed in TxDOT, that piece of their appropriated monies would have been allocated to the Maintenance Division for that purpose, and when the divisions transferred to the DMV, all of their monies transferred over and so TxDOT needed a way to pay that portion of the rent.

MR. WALKER: That answers one of my questions. The other question, though, is why is rent a variable cost when we have probably the same facilities every month, month to month to month? Wouldn't it be the same cost, or do we pay based on per employee?

MS. FLORES: I know part of the rent expenditures includes like when we rent space for meetings and conferences, so it's not going to be the same amount every month, it will vary with what staff is conducting, the type of activities where they need to rent some space.

MR. WALKER: Thank you.

MR. CAMPBELL: One other question, and I know you're going to break this down, and I think that we had asked that last time, especially on other operating expenses and Ed covered that that we are going to break it down, but under the professional fees and services where it jumps up to \$792,000 in April, what was that big spike there?

MR. SERNA: Let me try to address it. In April we brought onboard some additional project managers for the Vision 21 Project, we shifted the funds up to cover that since they were hired under professional services versus just an operating expense. We brought onboard a project manager to assist us in conducting the infrastructure analysis, we brought on two project managers to assist with the start of the business process mapping effort, so we executed agreements for that. And I apologize for not knowing off the top of my head, I know we had another expense where we brought onboard a firm to assist us in getting some other work done in-house.

1	But we'll provide that detail as well, that
2	part of the detail. This is a list of kind of these were
3	the major expenditures for each of, again, what I'm
4	calling sort of the lump categories which, by the way,
5	just for clarification, the lump categories, in my mind,
6	are professional fees and services and other operating
7	expenses, and we will add building rent as a clarifying
8	point since it's more than just the rent on the building
9	that we're in.
10	MR. CAMPBELL: Okay, thank you.
11	MR. VANDERGRIFF: Any other questions?
12	MR. RUSH: Can you tell me, I'm just curious,
13	maybe this is because of the lump sum payments you made,
14	but why the utilities jumped up to \$422,000 in February?
15	Is that because of that lump sum payment?
16	MS. HEIKKILA: Yes, the same thing, and even
17	though we're showing a lump sum payment in February or
18	whatever month that it was shown in, TxDOT will pay even
19	amounts for those purposes on behalf of the DMV.
20	MR. RUSH: Thank you.
21	MR. VANDERGRIFF: Linda, I don't see any other
22	questions.
23	MS. FLORES: Thank you.

meetings this month, and so I don't believe we have any

MR. VANDERGRIFF: We did not hold any committee

board committee updates.

Mr. Serna.

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MR. SERNA: Very quickly, with regard to the stakeholder meetings and industry information, staff attended the American Association of Motor Vehicle Administrators, AAMVA, conference for Region II.

Texas is a member of AAMVA, the DMV is a member of AAMVA Region II which basically runs from about North and South Carolina, south and across to Texas. It was held in Oklahoma City, I was there Saturday and Sunday for a Region II Board meeting. Brett Bray attended, representing the department, Sunday through the end of the conference -- actually, the conference ends today but he attended Sunday through yesterday representing us.

And the purpose of us attending that is primarily to network with, gather information from sort of how things are done with our peers in the other states. It also allows us to attempt to influence AAMVA's position on a national level with regard to things like single ID, national registrations of vehicles, et cetera. So that's one of the things that we did.

The other thing that we participated in, and I did this and several members from the staff, was the Texas Tax Assessor-Collectors annual conference in Abilene, Texas. That conference was held from Sunday through



today, I was there Monday through yesterday about midday meeting with the tax assessor-collectors.

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Since they are a stakeholder of ours, a significant stakeholder and partner of ours, in some regards a customer but primarily a stakeholder and a partner, we believe it's important to work with them to kind of get a sense from them on some of the issues that they face as they deal with their customers and ours.

Staff attended several work sessions that they had, provided input and received feedback from them. Mike and I also provided an overview to the collective group in a general session concerning the Department of Motor Vehicles, some of the activities that we're working on, the changes to Vision 21, and requested that they consider engaging in our efforts to gather input from them.

They were all very receptive and interested in participating either in the advisory committee or advisory councils or work groups or one-on-one in providing us input to various operating procedures and also to Vision 21.

And not as a result of that meeting but as a result of the department, and particularly VTR's interaction with the county tax assessor-collectors, we were invited to participate at all of their board meetings, not as a member, obviously, because we're not a



member of the organization, but they are giving us a time slot on every one of their board meetings which is good for us because it helps keep that rapport open.

I did ask them for recommendations of individuals to participate on work groups as well as on our upcoming advisory committees, and they indicated they would be forwarding a list of names for our consideration. So that was worthwhile as well.

In addition, we have the Automobile Burglary and Theft Prevention annual conference and board meeting coming up next week in Galveston, Texas. It begins on Sunday and runs through Wednesday, the board meeting is actually on Wednesday; the conference is Monday and Tuesday, there will be several breakout sessions.

I believe ABTPA will be announcing some outreach programs or public awareness programs an there will also be discussion concerning the grant process that they go through.

This conference is held in combination with -and Charles, you'll have to help me, I apologize for not
remembering off the top of my head, but there's another
association that it's held in conjunction with that. What
is that? The North American Export Association. And
that's in Galveston.

I believe two of our board members might be



able to attend part of that and they can have a report at our next board meeting, because I'll probably not be able to attend that after all.

And with that, that's kind of it for the stakeholder meetings and industry information update, and I can proceed to either item 4 and 5 or both items 4 and 5, your choice, Mr. Chairman.

MR. VANDERGRIFF: Unless there's any questions, and I don't see any, just proceed ahead.

MR. SERNA: Item 4 -- I apologize, let me do this real quickly. Some of the other stuff that we did, and Brett pointed this out to me, we did attend the Fort Worth Regional Conference and also the Williamson County. Williamson County held a meeting with all of their dealers, new and used automobile dealers in Williamson County and invited us to participate. We think that was a very good venue.

The North Texas meeting was basically sold out, or as a result of the North Texas meeting, we sold out the Fort Worth Dealer Seminar that we have that our Motor Vehicle and Enforcement staff, primarily our Enforcement staff conduct training seminars for motor vehicle dealers. We had one scheduled in Fort Worth and it basically got booked solid before we ever sent out any invitations and that's because of the mention of it and the outreach that

we had at the Fort Worth TAC regional meeting. So we think that those meetings are very valuable to us. We'll have to figure out what we do to allow more participation in that area from the dealers.

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So we were very encouraged, and that is a good example of -- Brett, thank you for reminding me -- a good example of how there's a significant benefit to us from participating in those kinds of events.

With regard to the advisory committees, staff
has drafted and will be e-mailing to the board a public
announcement that we intend to post on our website, as
well as possibly in the Texas Register, asking for
volunteers to submit their names to help us build -- and
we discussed this last time -- to help us build a pool for
use in the development of various advisory committees.
Remember the statute says we'll have an advisory committee
for Vehicle Titles and Registration issues, for Motor
Carrier issues, for Motor Vehicle Dealer issues, and our
approach was to basically, instead of having a standing
advisory committee, create advisory committees as we had a
need for them. So our first step is to send out sort of
an open call.

We're crafting a message that we'll put out to the public, we might even have a press release or something like that, not that that would be press-worthy,



but a press release, but we'll definitely have it posted on our web and possibly the Texas Register.

We'll run that notice by the board first just to make sure you're aware of it before we send it out, and not to take a vote or anything that's not in public, but if any of you have any comments on the language or you want to tweak that, feel free to provide that to me and we'll certainly make sure that that's incorporated in the message.

The second thing with regard to advisory committees, this is sort of a concept that I've discussed with a few people from the public, from the industry, and would like to pursue, unless the board tells me otherwise, I want to create work group, and I'm specifically calling it a work group because you have to have statutory authority to create a formal advisory committee.

But I'd like to create a work group similar to the one that was created that studied the issue to create or not create a Department of Motor Vehicles that has representatives from the automobile manufacturers, new and independent automobile dealers, county tax assessor-collectors and possibly a representative from law enforcement.

The intent in creating this is to provide the agency with sort of an oversight -- not oversight, I'm



sorry -- a standing organization that we can turn to very quickly to bounce ideas off of, seek input on items from on an informal basis.

Again, this group won't have a binding effect on the department, but it does give us a formal group that we can immediately turn to in the industries, or that they can then carry messages back to their respective organizations or industries.

So with that, those are the only things that I had on the advisory committees.

MS. JOHNSON: I have a question, please, Mr. Chairman.

MR. SERNA: Yes, ma'am.

MS. JOHNSON: I'm curious of why we want to create a work group that mirrors this board.

MR. SERNA: I think having a work group that doesn't have a formal role and that allows the staff to interact with it on a less formal basis provides us with an opportunity to not have someone sort of look at policies, establish direction for the department, but rather that we can call on an informal basis without having to have a posed meeting and we can very quickly run an idea past, sort of vet it, and it's along those lines that we were thinking of that.

Also, there's not a mechanism for us to create



1	an advisory committee, a single advisory committee that is
2	representative of the entire set of industries that the
3	board and the department support.
4	MS. JOHNSON: My issue with that is I believe
5	that you're receiving good input from this board, so I
6	would like to discuss that further at some point.
7	MR. SERNA: Yes, ma'am, and we'll stand down on
8	creating that, but that's a concept that I want to
9	continue to flesh out with the board.
10	MR. VANDERGRIFF: If you're still on this
11	topic, we have one person that would like to speak on it.
12	MR. SERNA: Yes, sir, I'm still on it, but I'm
13	done with my portion of it.
14	MR. WALKER: Well, I'm not finished.
15	MR. VANDERGRIFF: That's fine, I'm not either.
16	Go ahead, Johnny.
17	MR. WALKER: We had a board meeting here and we
18	had a committee meeting that addressed these issues a
19	month ago, and that committee came back to the board and
20	to the staff and I thought we gave directions that we were
21	to go out and search for the law states that we have to
22	create an advisory committee, it's in the bill.
23	MR. SERNA: Yes, sir.
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was to not usurp the advisory committee but that what we

MR. WALKER: And that what we had decided to do

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were going to do was to come up with a bucket and to use the advisory committee, and that we instructed staff to go out and to start looking for the people to fill the bucket with, to go out and to create this pool of advisory people to address the particular issues when they came up. What happened to that directive?

MR. SERNA: We're still doing that. That's the first part of my presentation which is where I said the staff was developing a message to both post on our web and possibly the Texas Register to sort of have individuals volunteer -- there will be a very brief identification process -- but to have individuals say I want to participate on any kind of advisory committee or specifically on an advisory committee that talks about one of the listed topics that we have: Motor Carrier, Motor Vehicle, Vehicle Titles and Registration, Vision 21, whatever that may be. So we are pursuing that.

MR. WALKER: Have we posted this request for people yet?

MR. SERNA: The second thing that I said was staff is crafting the message, we're going to circulate it to the board members for board member feedback, comment on wording, whatever, and then we would post it. If we get your feedback, and we'll provide adequate time to do that, we'll have that posted probably next week and we'll begin



to gather that list. So we are implementing the instruction of the committee and the board from the last board meeting.

MR. WALKER: Thank you.

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MR. VANDERGRIFF: Any further questions of Mr. Serna at this point? We're still on this topic. We did have one card that Mr. Ken Roche wished to address the board on this particular topic.

MR. ROCHE: Good morning, Mr. Chairman, members. I spoke with you last time and this is really more of a followup for the benefit of those items that I had presented to you as a concern from the standpoint of those of us that participated in the study group originally a year and a half ago.

I met with Mr. Serna for about an hour and a half, we went through a lot of different elements of that. In response to the Vice Chair's question on the board versus advisory committees, at least from my vantage point of having participated in that study group, our focus as an advisory committee vision of what we're going to get into is more the day-to-day interface with the public and those industries that the agency regulates.

This board would deal with policy and the advisory committees would then be available to then study any topic that the board thought their assistance would be

appropriate.

But even though the board has more of that policy scope, we were thinking that in terms of manufacturers, dealers, our day-to-day interface with the Motor Vehicle Division, carriers and their interface with the Motor Carrier Division on a working day-to-day kind of function would not be something that you would normally look at and it would be a much lower technical interface, what's happening, what's slow, what's not working as well as we need it to work, on more that day-to-day operational function. So at least from the study group, our original discussions differentiated that scope of focus for those two distinct groups.

I thought the advisory committees, and my discussions and my advice was the advisory committees would be available to go run errands, do studies, but there's also things that you wouldn't normally get into at the board level, and we would hope that those advisory committees would be able to interface with the staff to ask questions about why something is happening the way it's happening. That's a general description of how we, at least, saw the difference between those two, and I hope that's helpful.

MS. JOHNSON: I appreciate your input on that and all that you have done because your efforts with the



work group were tremendous. I constantly go back to that report and greatly appreciate all. I guess my concern is we were appointed by the governor to represent our industries, and I know from my perspective, I have a difficult time at times separating myself as Galveston County Tax Assessor-Collector with a responsibility to my public and a board member. I see the day-to-day issues, we live the day-to-day issues, as I would think that our car dealers and our chief and our motor carrier, all of our representatives do.

So I guess my greatest concern continues to be we have made requests through our committees for information from staff and staff is not able to fulfill our requests, and until those requests can be made, I really cannot support continuing to put more requests on staff.

We have so many committees and so many activities that we need to handle, I would think that we have plenty of opportunity to receive additional input that we need to get into that before we create another group of people making more demands. And I don't hesitate to ask, through Mr. Serna, for information; I would not hesitate to ask for that information or to request information from our industry. So I'm still struggling with this one.



1	MR. VANDERGRIFF: Can I ask one quick question?
2	Do we have any questions of Mr. Roche? If we're talking
3	discussion about the idea, it might be a little bit
4	different, but if there's any questions for him.
5	MR. GILLMAN: Well, you think the role of the
6	advisory committee is to go directly to the staff and the
7	industries. Is that what you're saying?
8	MR. ROCHE: That was the concept that we had
9	explored.
LO	MR. GILLMAN: And I don't agree with that.
L1	MR. VANDERGRIFF: Well, I just wanted to make
L2	sure because I didn't want him to have to sit up here
L3	while we discuss this.
L4	MR. GILLMAN: Well, I didn't want him to fade
L5	away and not understand what I was saying either.
L6	MR. VANDERGRIFF: That's great. Does anybody
L7	else have any questions of Mr. Roche?
L8	(No response.)
L9	MR. VANDERGRIFF: We're still on the topic, but
20	thanks very much.
21	MR. ROCHE: Thanks for the opportunity.
22	MR. VANDERGRIFF: Mr. Gillman.
23	MR. GILLMAN: Well, I believe I just made my
24	point and I hope that point was well taken.
25	MR. SERNA: Yes, sir.



MR. VANDERGRIFF: Anybody else have any further comments?

(No response.)

MR. VANDERGRIFF: Okay, Mr. Serna.

MR. SERNA: And again, this was presented to the board, staff hasn't taken action on it yet, and we won't take action on it until we hear with regard to that work group. We are taking action, as I mentioned earlier, with regard to creating the pool for the advisory committees, so it's two separate issues. So we're moving forward from the last instruction, this was an additional to try to address some issues that have come -- not issues that have come up but some points that have been made to me.

MR. WALKER: Are there any requirements or anything to be on this? I mean, I know Mr. Roche would love to be in that pool of people, as I'm sure there's some people within the trucking industry and with the tax assessors' offices and car dealers that would want to be able to have a voice within those advisory committees.

So we need to make sure we post those positions so that those people are aware, such as Mr. Findicin back here would know that they would put it in their briefing that goes out to the trucking industry that says that the DMV is creating advisory members, who would like to serve.

MR. SERNA: Right, yes, sir. Unlike a job posting, probably right now the only qualifications would be to serve on a specific advisory committee, Motor Carrier, Motor Vehicle, Vehicle Titles and Registration. One of the criteria for some of the members will be knowledge of that particular industry, but it doesn't prevent someone from the Motor Carrier industry from participating on a Motor Vehicle advisory group or Vision 21 advisory group.

It's more, like I said, unlike a job posting where we're saying you've got to have five years of this and four years of that, it's more highlight to us your background, your experience and the particular areas that you have interest in participating in.

We will also be looking at soliciting participation from the public at large, and that could be someone that simply drives a car versus drives professional or sells automobiles or manufactures them or titles them. So we will be including the public also, so that's why the qualifications are as simple as they are.

I anticipate that the pool will be a pretty good size. I had also anticipated that we would utilize the various associations which is why when I was at the County Tax Assessor-Collectors Association meeting I mentioned it, that we would use the various associations

to get the word out to their membership or to provide us feedback on how best to get the word out to their individual memberships as well.

MR. WALKER: Well, I think we agreed at a committee meeting that we were going to cap that number at around 50 people. Was that not the number we picked?

You're shaking your head, Brett.

MR. BRAY: I believe I remember, if you're talking about actually serving on any particular committee --

MR. WALKER: We decided to have a pool instead of having an advisory committee on cars and taxes and motor carriers, we decided to have a pool where we would draw from resources for different topics as we needed from that pool. That was the suggestion of the Projects

Committee when we met and that's what we brought back to the board and that's what I thought we were going to do.

MR. SERNA: Actually, sir, not correcting you, I didn't take it as a suggestion, I took it as instruction, and that's the instruction that we're following. I think the limiting and what Mr. Bray was referring to, the limiting number had to do with when we did develop a committee, the size of the actual committee, but we didn't put a size on the pool that we would build.

So we could end up having a pool of 100 people



but if we convened a committee to look at titling issues, let's say, at least what I heard from the subcommittee and then from the board is that we would try to keep that number to a manageable number of individuals so that instead of having a large group that becomes difficult to manage and actually get input and feedback from, that it would be a more effective group. So that was the only limiter that we had, not on the pool that we were building, and that's the assumption we were working from.

MR. WALKER: Well, I can tell you this from working on different boards and committees and so forth, if you go out here and you create a pool of people that's got 100 people and you never ask somebody to do anything, he's going to be disgruntled with you because he volunteered to do something and he's never been asked to do anything.

So I think you need to restrict the amount of people that we put into that pool, and we sure don't want that pool to be over 50 people, in my mind, and maybe even smaller than that so that we actually do take and utilize those people when we need them or create work for them.

MR. SERNA: Yes, sir.

MR. WALKER: I mean, if I was asked to serve on this board and I came up here and didn't do anything but prop my feet up on the table, I'd quit coming, I'd say



well, hell, they don't need me.

MR. SERNA: And that's part of why we had discussed in the committee and in the board meeting of not having standing advisory committees but rather creating advisory committees on topic-specific issues as we needed them.

We can certainly limit the number of people in the pool. I already have from staff suggestions for at least three advisory committees to look at different very specific topics. Limiting that to 25, let's say 12 people work group, I'm already at 36, and that does not include the Vision 21 advisory council which will be broader.

So I completely understand your concern about involving people, especially the public and I'm sure we could get tons of people from the public that say I want to participate on something, but I'd like to request your indulgence at least initially to not restrict this to at least 50 but some manageable number, maybe not to exceed 100, because if I'm already at 30 and I have a couple more at 12 each, then I can easily begin to consume the majority of that pool. Now, granted, there may be some repetition where someone serves on two, but that's going to be kind of unlikely.

But again, we can defer to 50 or whatever. I'd kind of like to see what kind of feedback we're getting.



1	We're going to craft some language that includes a caveat
2	in there that describes how we're going to engage the
3	individuals that say they want to participate and let them
4	know it's going to be for very specific items, real work,
5	not just kind of getting briefed and going away, providing
6	input, kind of outlining those sort of issues.
7	MR. GILLMAN: May I?
8	MR. VANDERGRIFF: I'm going to let Mr.
9	Rodriguez go ahead.
10	MR. GILLMAN: Go ahead.
11	MR. RODRIGUEZ: Just a statement and a couple
12	of questions. Number one is we're talking about the
13	committees that are set forth by legislation?
14	MR. SERNA: Yes, sir.
15	MR. RODRIGUEZ: I mean, it clearly talks about
16	committees as opposed to pools, I'd suggest we make those
17	committee appointments. And my other question is are
18	those are those board committee appointments or chair
19	committee appointments?
20	MR. SERNA: They're executive director
21	committee appointments.
22	MR. RODRIGUEZ: Executive director.
23	MR. SERNA: Yes, sir.
24	MR. RODRIGUEZ: There's a distinction between
25	those I'm suggesting that there's a distinction between



the legislatively required committees and departmentally you need to get the job, and I'm asking, Chairman, are we suggesting that we're going to have to approve at this level any work committee he wants to put down there to work to help him get the job done and bring policy matters to us?

MR. VANDERGRIFF: I would think he has the right to put together a work committee as he sees fit.

MR. RODRIGUEZ: Thank you.

MR. GILLMAN: John, addressing what you were saying, if I'm understanding this right, and I thought I understood it pretty well the last time, Ed, what you're saying is if you want to have a Motor Vehicle, you've got a pool, a committee of 10 people or 12 people, and to address what you say, well, I volunteered for this job, I want to be able to do it and you have an issue that would be affected and that we need the advice of that committee, you notify all 12 people and those who want to participate, participate. It's pretty simple. But you're going to have to let him have more than 50 people, I think.

MR. WALKER: Here's what we decided to do in committee was instead of creating five advisory committees, an advisory committee on motor carriers, an advisory committee on car dealers, an advisory committee



1	on tax assessor-collector issues, or an advisory committee
2	on Vision 21, is instead of doing a bunch of advisory
3	committees is that we would take and create a pool of
4	people.
5	MR. GILLMAN: I didn't understand it that way,
6	I understood it would be a pool of people for each
7	individual.
8	MR. WALKER: No. The pool of people is a
9	bucket of people, everybody in this room.
10	MR. GILLMAN: So you're going to have everybody
11	in this room.
12	MR. WALKER: And then we have an issue with car
13	dealers, if you had an issue
14	MR. GILLMAN: But then you've got a motor
15	carrier guy.
16	MR. WALKER: He's not pulled out of the pool to
17	work on that advisory committee, he's left in the bucket,
18	and then you go get the three guys.
19	MR. GILLMAN: I think you just described what I
20	said, it works the same way. In other words, if you have
21	got a pool and you have individually drawn lines within
22	that pool, you have created a committee.
23	MR. WALKER: But there may be a car dealer that
24	is an excellent person with technical data background that



may want to also serve on the Vision 21 committee.

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MR. GILLMAN: The he can put his application in or submit to do that.

MR. WALKER: To do that also.

MR. GILLMAN: But I think for Ed, it would make his job a lot easier if he knew that he had a committee that was dedicated to wanting to advise on motor carriers, instead of him having to say well, I wonder if this car dealer knows a whole lot about this motor carrier problem.

MR. SERNA: If I can, what I'm hearing is sort of coming to the same point from two different directions. That broad pool, and I had mentioned this earlier, these individuals will say these are generally the topics I want to get involved in. Jeff Martin, who is sitting out in the audience, may say when he submits it, I want to get involved with anything that has to do with independent automobile dealers and Vision 21 as it affects independent automobile dealers.

So we'll have that information so when staff needs to put together the advisory committee for motor vehicle issue, which is one of the three advisory committees, we would look and say well, here's Jeff Martin and this issue has to do with a motor vehicle issue, independent dealers, we'll pull him in on the pool.

There may be someone else, Andy Slack, who is sitting out there, that says I just from the public want



to participate, and since we have to have a public member, and Andy could say on any issue or just on technology issues, we may pull Andy in.

So there is a distinction in the pool which is what Mr. Gillman was saying, but what Mr. Walker was saying is correct, that pool is general enough. If someone doesn't put anything down, they simply say I want to participate no matter what and we had an open seat, then I would probably contact them and say do you have any interest in motor vehicle issues or technology, and they can go oh, no, not technology, I can't use a cell phone. So we'd include them or not include them on that.

MR. WALKER: Well, Ramsay, when you go, for example, to Vision 21, Vision 21 is such a huge project, it needs input from every particular segment of the industry, it needs to have motor carriers, it needs to have car dealers, it needs to have tax assessors, all those people need to particulate because there's going to be lots of input on how we put together that Vision 21 concept.

MR. GILLMAN: Couldn't agree more, but I think motor carriers may not be as well served by having a car dealer serving on it. If he's an exceptionally smart guy, that's all well and good, but I think if you had a committee dealing with motor vehicles and you didn't have



1	someone like Mr. Roche on it, you'd be making a mistake.
2	You need to identify him as a qualified businessman.
3	MR. WALKER: The legislature that created this
4	does not specify any particular advisory committees, it
5	just says that the director must create advisory
6	committees is what it says.
7	MR. GILLMAN: Luckily, I think we're heading up
8	the same road here.
9	MR. WALKER: We are.
10	MR. GILLMAN: So you can either surrender or I
11	will.
12	MR. WALKER: Let's both surrender.
13	MR. GILLMAN: You got it.
14	MR. VANDERGRIFF: Thank you, gentlemen.
15	(General laughter.)
16	MS. JOHNSON: Question.
17	MR. VANDERGRIFF: Yes, Ms. Johnson.
18	MS. JOHNSON: You had stated, Mr. Serna, that
19	the staff has asked for three groups already. What are
20	those three interests?
21	MR. SERNA: Motor Carrier, Motor Vehicle,
22	Vehicle Titles and Registration.
23	MS. JOHNSON: Which are the three advisory
24	committees already required by law.
25	MR. SERNA: Yes, ma'am.



1	MS. JOHNSON: And we haven't moved forward on
2	those yet, so are we going to proceed to create these
3	pools under the current chairmanships, or are these going
4	to be the spinoff committees that you mentioned earlier?
5	MR. SERNA: Under the current chairmanships?
6	I'm sorry, ma'am.
7	MS. JOHNSON: I'm chair of VTR; I believe Mr.
8	Walker is chair of Motor Carrier.
9	MR. VANDERGRIFF: I named members of the board
10	to be a part of those committees as either a chair or a
11	liaison or as to what that would be. That was early on in
12	the process.
13	MR. SERNA: Right, and I think that and
14	Brett can correct me each committee has to designate
15	its own chair and the only change was that would be the
16	board liaison of any committee that we created, so yes,
17	ma'am, I know that each committee that I create already
18	has one member and it's the board member that the chairman
19	designated.
20	I don't know the topics yet, and I don't know
21	the other membership yet, but I know that there's at least
22	that one member. So no, ma'am, it doesn't change any of
23	that.

Thank you.

MR. VANDERGRIFF: Any further questions?

MS. JOHNSON:

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(No response.)

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MR. VANDERGRIFF: You still have the floor.

That's it on advisory committees. MR. SERNA: The last thing that I have is the executive director's report, a very brief report. And I sent an e-mail out the to the board and of course it's published on our website, the agency did submit, as required by statute, its customer service report on June 1. Despite the challenges that we faced being a new agency with very little information, each of the divisions had, fortunately, collected independently information about its customers, and Julie Bursett was able to compile that into what I believe to be a good report considering that we had slightly less than six months of operation that was considered for material in the report, but we also made commitments in the report and to the board that we will put in place measures to report and capture feedback from our customers, one, for regular reporting to the board, but two, for the next report which is due in two years. So we'll be prepared for that.

I am pleased to report, again, that the department met its statutory deadline. There are agencies, long-established agencies that still have not submitted their customer service report, and they were all due on June 1. So that's an accomplishment for the staff



and particularly for Julie.

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Second, we implemented the organizational changes and posted some vacant director positions. of those positions were posted internally because they were created as a result of the reorganization, and two of them which were already standing vacant, Motor Carrier and Vehicle Titles and Registration, the latter because of Rebecca Davio leaving the department to go to DPS, were posted externally. In addition, we posted a position for our HR manager which was posted on May 28. We're using the Texas Workforce Commission to assist us with that hiring so we can begin to kind of get experience using TxDOT has provided us with really good support but that. since this is for an HR position, we wanted to make sure that there was no perceived conflict with anybody in TxDOT's HR applying and then being screened by TxDOT's HR themselves, so we're using the Workforce Commission, workintexas.com to help us with that, and Dawn has got that posted.

Finally, one of the things that when Linda mentioned this to the board at the last board meeting when she went over the sequence of events that was going to occur, and I've gotten feedback from a few of the board members independently, one of the things that we have coming due is the Strategic Plan which is part of the



state's appropriations process. All state agencies submit their plan at the same time, agency plans are due anywhere from June 18 to July 2. The due date for our agency is July 2. I mentioned this earlier, our approach to that is staff, specifically Linda right now, we'll get other staff engaged, staff has prepared a preliminary, and when I say preliminary, I mean a very preliminary draft of this document. We intend to send that document to the board probably later today or tomorrow for feedback, comment.

There are three areas in particular that the board plays a significant role. A lot of what's in that document, by the way, pro forma, the agency's HUB report, the agency's workforce analysis, et cetera, but there are three areas in particular that the board plays a key role. That's in establishment of the agency's vision, establishment of the agency's mission, and establishment of the agency's philosophy.

Again, what we didn't want to do was just give you -- when I say you, I mean the board, I apologize for the informality -- give the board a set of instructions and a blank sheet of paper and say come up with something, given that we have such a compressed period of time this first time around. And by the way, we have attempted to maybe get an extension and we were told don't even ask for an extension, we're not giving extensions on this,

especially this coming session. So given the fact that we have a short turnaround time, that's why we've chosen this approach.

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I know that I have received some feedback from some of the board members, in particular the Vice Chair, and I do recognize that the board and the key staff members need to get together as a group and establish the agency's strategic direction. What I would propose that we do is attempt to do that in some form of a compressed fashion but also that we look at developing sort of this formal statutorily required document by the deadline but then have a strategic plan that matches this but with much more detail, much more time for board participation, maybe even stakeholder participation, that we work on establishing that and have that document as well. T know that other agencies have two documents, the formal kind of this doesn't say anything to me document, and then the more public strategic plan.

So one, staff has prepared a preliminary, very preliminary drafts; two, we'll be getting that to the board today or tomorrow; three, the board will have to establish some deadlines on if it needs to meet again, when it needs to meet again so that we can get feedback, input, have a conversation about it, and then get it approved, and we'll get it finalized, printed and



submitted hopefully on our deadline of July 2.

2.

Let me make sure I've got everything covered. In addition, one last thing I failed to report is we're working on another wave of postings for finance positions, additional human resource positions and some other administrative postings that we hope to have the vacancy notices posted by Monday, June 14 so that we can get that done. And then we will be looking at space allocation within the space that we're allotted for our current operation, space allocation for these functions as we stand them up in finance, human resources, accounting, et cetera. So staff has got a full plate.

And with that, I conclude my report and avail myself to any questions that the board has on anything that I've said.

MR. VANDERGRIFF: Do members of the board have any questions of Mr. Serna on the most recent part of his report? Mr. Campbell.

MR. CAMPBELL: This isn't directly related to the report, but as to the State Auditor's report, have we gotten any findings on that yet? I think they started the process. Have we received anything or any type of notification?

MR. SERNA: No, sir, we have not. I did receive a call this morning from the lead auditor, Ann



Karnes, asking to meet with us. They've completed their preliminary efforts and will now scope the audit, but she didn't provide me with any details and we're trying to establish a time to meet with them. We're tentatively looking for potentially tomorrow afternoon sometime, and it's so the auditor can come back and say we've completed our preliminary scoping effort, here's the scope of the audit, and they'll give us a formal document. If I get that finalized, and I talked with Ann this morning, I will share that with the board as soon as I get that done. And you can certainly participate or we can have you engaged by telephone. Chairman, I don't know if you'll be available or not, but we can engage any of the board members by telephone, but very specifically the chair of Finance and Audit Committee.

But no findings yet. The specific answer to your question is no, sir, nothing yet.

MS. JOHNSON: I have a question with regard to that. Will you be drafting responses in advance of that meeting so we have something to start with? Because we'll see the audit and it would be nice to have the agency at least have some preliminary response.

MR. SERNA: Yes, ma'am. Let me back up, I'm sorry, I may have confused the board. When we get a preliminary audit with findings from the Auditor's Office,



we will share that with the board. Staff will draft responses that we will share with the board for input before submitting them to the Auditor's Office. meeting that Ann has asked for, they have not really completed any audit work, they were doing scoping work, and they want to meet with us and say here's the scope, there's some things that we're going to be looking at that we mentioned before we were going to look at, there's some other stuff that we probably want to look at that we didn't talk about before but we kind of found it in our I don't have scoping, the State Auditor's scoping. anything from them on that yet, I'll probably get that at that meeting and I'll share that with the board. I didn't get the impression at all from her that they were looking for any kind of response. This is

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that they were looking for any kind of response. This is more them to us saying here's what we've been doing and here's what we're going to be looking at now, we're going to kind of kick off the audit, the actual audit work. They've been doing preliminary scoping work.

MS. JOHNSON: Thank you.

MR. VANDERGRIFF: Any further questions of Mr. Serna?

(No response.)

MR. VANDERGRIFF: Seeing none, the next item on our agenda is the executive session, and we're going to go



directly into executive session. It is now five after 11:00 a.m. on June 10, 2010. We will go into executive session under the following sections of Texas Government Code: Section 551.071 to obtain the advice of legal counsel regarding agenda items 2.A.4, 2.A.5, 4.A, B, C, D and E, 5.A.1, 2 and 3, and 5.B.1, and to consult regarding pending or contemplated litigation or settlement offer; and also under Section 551.074 to discuss personnel matters under agenda items 2.A.4, 2.A.5.

2.

For those of you in the audience, I anticipate being in executive session for perhaps 30 minutes or less, do not anticipate a long session, and we will reconvene in open session after that. And with that, we are adjourned from the public meeting and we're in executive session.

(Whereupon, at 11:05 a.m., the meeting was recessed, to reconvene this same day, Thursday, June 10, 2010, following conclusion of the executive session.)

MR. VANDERGRIFF: It is now 12:15 p.m. on June 10, 2010 and the board has ended the closed session of the meeting and has come back into open session, and we'll now continue with our agenda. We are on agenda item 4, which is our Consent Agenda.

Mr. Bray, would you like us to take up these by category, or can we accept them all as presented?

MR. BRAY: You can accept them all as



1	presented.
2	MR. VANDERGRIFF: Okay. I would be pleased.
3	MR. RODRIGUEZ: So moved.
4	MR. VANDERGRIFF: And I think I got a motion
5	from Mr. Rodriguez to approve the consent agenda.
6	MR. GILLMAN: Second.
7	MR. VANDERGRIFF: And we have a second from Mr.
8	Gillman.
9	MR. RODRIGUEZ: Was there a question on number
10	A.17, Mr. Chairman?
11	MR. VANDERGRIFF: I apologize. Yes, I should
12	have asked that question but I believe that Ms. Johnson
13	told me that she does not have a conflict on that
14	particular case. I should have notified the board of
15	that, I apologize.
16	With that, we have a motion and a second. I'd
17	call for your vote, signify approval by raising your right
18	hand, please.
19	(A show of hands.)
20	MR. VANDERGRIFF: The motion carries
21	unanimously with Directors Marzett and Butler absent
22	today.
23	With that, we will proceed to agenda item
24	5.A.1, which I do have one card for public comment, and if



it's all right with Ms. Phillips, you're on the third item

of this agenda so I'll ask you to make your comment then versus right now in front of 217. I have agenda item number 5.A.3. I'm going to go through 5.A.2 first and then bring you up; I just didn't want to confuse you because the public comment was listed first.

2.

With that, I'd bring up agenda item 5.A.2, which is Chapter 217 and that is proposed amendments to the Vehicle Titles and Registration rules.

MR. CRAIG: Good afternoon. I'm Mike Craig,
I'm the interim director for Vehicle Titles and
Registration Division.

We have the rules up for final adoption today. These amendments to this chapter were proposed at the April 8 meeting of the board, they were published in the April 23 edition of the Texas Register. Notification of changes to the proposed rules were published in the May 28 edition of the Texas Register and the deadline for comments was extended from May 24 to June 7 to allow public comment on those. No comments were received.

The primary difference between the rules as originally proposed and the revised version is that the board will be the entity that gives final approval for all vendor and non-vendor specialty plate designs that come under this chapter, instead of the executive director which was the original proposal in the rules. To



accommodate this change, the provisions allowing public comment on proposed plate designs was changed to allow for that public comment at an open meeting of the board.

That's the way they'll be presented in the future if you were to adopt these rules.

Originally proposed language has also been deleted that would have prohibited the department from registering a personalized plate number or approving a license plate design if either has been the subject of litigation in Texas or another state.

And then finally, the generic license plate or the one that they currently have in the My Plates program, the vendor program with white sheeting only, it's also known as the book flag plate -- you would recognize it if you saw it, it was from a general issue plate design that we had years ago -- has been moved to the luxury pricing category, and if personalized with an unrestricted six-character plate number, and that's really the critical thing, if you can go in and just choose it among a six-character random group, then that pricing initially when they presented this plate was offered at a custom category pricing as opposed to the luxury pricing. It was a little anomaly between that pricing for that plate and others that got the same type of six-character plate pattern.

So what this proposal would do is to provide



that if the customer orders that plate with that sixcharacter unrestricted number on it, then it's going to be
priced at the luxury level which at the custom level was
\$85 and now it's going to be \$195 for one year. That's
really the change. If they order a custom plate, they can
still get it but they can't get that six-character
unrestricted number.

And then one more thing that we did have was the one-year fee for the T plates has been raised from \$95 to \$155 for a one-year plate under these proposed rules. And then based on its analysis of the sales, the vendor has determined -- the reason why they did this was they've determined that that one-year fee was too low.

So based on the fact that we had no comments on these proposed rules, we recommend that they be adopted, and I welcome any questions.

MR. VANDERGRIFF: Does anybody have any questions of Mr. Craig?

Ms. Johnson.

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MS. JOHNSON: I believe, but I'm not certain, we had asked the first time when we went out for the rules for revenue estimates and I just found a piece of paper that looks like it's estimates that are actual that we had asked My Plates to bring back revenue estimates, projections and what they thought they were going to do,

and I understand in our committee meeting that that had been provided to Rebecca but I'm not certain that we ever received that.

MR. CRAIG: We didn't send it forward to you that I know of. We can certainly do that if it was provided.

MS. JOHNSON: We had asked for that in the meeting when we first adopted these rules that that be provided, and I do believe that My Plates had provided that but it's never been provided to the board, to my knowledge.

MR. CRAIG: We'll get that to you.

MS. JOHNSON: And then looking at the legislation, and I'll keep this kind of short, if you could, and this might require some time and I hate to give the staff another burden, but if you could gather some information on the actual costs for the DMV to release --we just got notification as tax assessor-collectors on the My Plates how to process an RTS, and I know that there's a lot of expense involved in developing the technology and especially in an old computer system, so if it would be possible to provide at a future date an estimate of administrative costs.

I know that the legislation says you're not going to receive less than the eight dollars, but I'm



curious of whether that is actually covering the administrative costs, and I know there's other revenue sources too, but I just want to ensure on behalf of this agency that all the costs are being considered, what's the administrative cost when there might be contract negotiations, what did it actually cost our IT department in order to implement this into the RTS system.

MR. CRAIG: We'll sure do that.

MS. JOHNSON: Thank you.

MR. VANDERGRIFF: Yes, Mr. Rodriguez.

2.

MR. RODRIGUEZ: I don't have a problem with the rule proposals as presented today, the question I have is this, at some point, and I'm not sure I want to put it on the business entity that's trying to engage us in business, but we maybe as an agency, can we have proposed specialty plates, license plate reading technology tested and validated before we act on them?

MR. CRAIG: If I understand your question, you mean testing the market for it or for the readability?

MR. RODRIGUEZ: Readability, right.

MR. CRAIG: Yes, sir, we do that. I believe we may have discussed it even when we discussed the heart symbol and what the impact will be on law enforcement and toll cameras or whatever to be able to discern that and to be able to read that license plate number and identify



1	that with a vehicle or owner. That was your concern, I
2	believe, in a previous meeting. We do that testing
3	through agreement with the Department of Public Safety
4	that we've established standards for that, and so that's
5	done prior to the release of any of these plates and if
6	this is going to be heard by the board in the future, that
7	will be part of the presentation that when we bring it
8	forward, it will have already passed that testing.
9	MR. RODRIGUEZ: Okay, that answered my
10	question. Thank you, sir.
11	MR. VANDERGRIFF: Any further questions from
12	the board?
13	MR. RODRIGUEZ: Move for approval, Mr.
14	Chairman.
15	MR. VANDERGRIFF: Go ahead, Mr. Bray.
16	MR. BRAY: I hope I can get you to retract that
17	motion.
18	MR. RODRIGUEZ: Okay.
19	MR. BRAY: In our haste to prepare this, in the
20	in addition section, we left off a couple of things that
21	I'd ask that you consider entertaining in your motion.
22	The first is on page 8, line 6, inserting "executive
23	director" where it says "director"; same thing on page 17,
24	line 16. If you are thumbing through, basically there are



two places where it says "director" that we'd like it to

say "executive director." And there's one place where it says "department" that we would like it to say "board" and that is on page 12, line 6. They're pretty minor things but I wanted you to be aware of them and hopefully incorporate them into your adoption if you do decide to adopt.

The second thing is the litigation

The second thing is the litigation consideration that we removed from the proposal inadvertently slipped into the published version in the in addition to, not the published version that went out officially as part of the Administrative Procedures Act but that second publication that we did just for extra notice. And just to let you know, that's not being proposed to be adopted.

Again, it was taken out and intended to be taken out; it just inadvertently slipped in, so I just wanted to make a record reference to the fact that that shouldn't have been in there.

MR. RODRIGUEZ: And I so modify my motion, Mr. Chairman.

MR. VANDERGRIFF: Do I have a second?

MR. RUSH: Second.

MR. VANDERGRIFF: Second from Director Rush.

With that, any further discussion by the board?

(No response.)



1 MR. VANDERGRIFF: Seeing none, I'd ask for your vote for approval by raising your right hand. 2 (A show of hands.) 3 4 MR. VANDERGRIFF: The motion carries unanimously with Directors Marzett and Butler absent. 5 6 Thank you very much, Mr. Craiq. Mr. Bray will present Chapter 217, the Motor 7 Vehicle Division proposed rules -- 215, I'm sorry. 8 9 MR. BRAY: I'm asking Ms. Cost to approach so that she can help me, if that's okay with the board. 10 MR. VANDERGRIFF: Absolutely. 11 MR. BRAY: This agenda item involves Chapter 12 215 and relates to practice and procedure for 13 14 administrative hearings before the State Office of 15 Administrative Hearings, and the proposal was published in the April 23 Texas Register and there were written 16 17 comments received from both the Texas Automobile Dealers 18 Association and the Texas Independent Automobile Dealers Association. 19 20 These amendments are proposed to clarify that the board is directing the State Office of Administrative 21 Hearings to deal with interim issues regarding issuances 22 23 of subpoenas, cease and desist orders, and clarification 24 or modification of statutory stays.



The Texas Independent Auto Dealers Association

commented that the board's AG opinion request that you're familiar with deals with delegating certain interlocutory matters to SOAH and the association has no objection to the rule amendments pending issuance of the AG opinion.

They further expressed confidence in the board's oversight of the department's handling of interim matters should they be directed to SOAH.

2.

We appreciate the TIADA support, however, I feel the need to point out that the AG opinion request is really now about whether the board can delegate interim matters to SOAH, it's rather about whether the board can delegate final order authority to someone within the DMV staff if it so chose.

215.312 allows SOAH ALJs to issue subpoenas, it streamlines the hearing process. There was a comment from the Texas Auto Dealers Association that supports these proposed amendments. 215.314 allows the SOAH ALJs to conduct hearings and issue orders on cease and desist requests, similar to the matter you heard at the emergency meeting in April.

Other amendments to 314 make it clear that the burden of proof is on the party asking for a cease and desist order and clarify that only the granting of a cease and desist order is subject to appeal before the board.

TADA suggested in its comments that the board



remove the words "or this chapter" from 314(a) as an unnecessary reference since the rule already covers

Occupations Code 2301 and Transportation Code Chapter 503.

The staff's response is that "this chapter" is a term of art referring to Chapter 215.

Since it may be confusing, the staff recommends duplicating the language in the statute itself using the phrase "or a board rule or order" instead of "this chapter." If that's cloudy and unclear, what we're suggesting is that it mean that the order be applicable to Chapter 2301, Chapter 503 or any board rule or any board order.

Another comment TADA observed that the proposed amendments allow a party who disagrees with the issuance of a cease and desist order the right to appeal that order to the board on an interlocutory basis but not the right to appeal the denial of a cease and desist order. TADA suggested replacing 324(j) with language stating that a party who disagrees with either the issuance or denial may appeal. The staff response is that Occupations Code 802(d) states: "An appeal of an interlocutory cease and desist order must be made to the board before seeking judicial review as provided by this chapter." We believe this restricts appeals to grants of cease and desist and final orders only.



1	Finally, in 315 the proposal allows the SOAH
2	ALJs to conduct hearings and issue orders on motions to
3	lift, clarify or modify statutory stays. TADA suggests
4	that a party should be to choose to file with either the
5	ALJ or the board itself if it seeks to appeal, and the
6	staff response is that we do not support this because it
7	would slow case processing requiring the board to conduct
8	evidentiary hearings and encumber its calendar.
9	With that, Mr. Chairman, we submit the proposed
10	rules draft for your approval.
11	MR. VANDERGRIFF: Well, we do have one member
12	of the public that wishes to comment, and I want to thank
13	Ms. Cost for your detailed briefing today.
14	MS. COST: You're welcome.
15	(General laughter.)
16	MR. BRAY: Mr. Chairman, if there are any
17	questions, Ms. Cost would be most willing to help.
18	MR. VANDERGRIFF: I couldn't help, I apologize.
19	Any questions of either Ms. Cost or Mr. Bray?
20	None. All right.
21	We do have Karen Phillips from the Texas
22	Automobile Dealers Association wishing to speak on this
23	proposed rule.
24	MS. PHILLIPS: Good afternoon. Karen Phillips



with the Texas Automobile Dealers Association, and I

appreciate the opportunity to explain the written comments that I'm certain you have received and gotten a copy of.

With respect to what Mr. Bray just mentioned on the clarification with respect to 215.314(a) to replace "chapter" with "a board rule or order" -- I believe that's what he read out -- that seems to be perfectly fine and I think helpful clarification.

As to the next concern about the proposal only allowing a party who disagrees with the issuance of a cease and desist order the right to appeal to the board, precluding someone who's been denied the issuance of a cease and desist order the right to appeal to the board, once again, TADA believes that if you've either had the cease and desist order either denied or if you have had one issued, we believe that there should be another mechanism for review, and that review is this board. And so we're asking that you allow yourselves the indulgence to look at whether or not the granting or denying of a cease and desist order should stand after a SOAH ALJ has made that ruling.

We feel that the statute itself allows for it and that should be something that a party should be able to access the board to allow to have happen and not foreclosing a person who has been denied the issuance of a cease and desist order the ability to come before the

board and ask again and have a review of what that SOAH ALJ has decided.

with respect to the statutory stay provision, I am very sensitive to the fact that adopting what we're proposing about a statutory stay about a person who's affected by such could come before the board and ask for a review and very sensitive to your time and the needs that you have, however, statutory stays are extremely important when your livelihood is at issue, and we would request that you consider having language in the rule that actually tracks the statute because this language really comes from 2301.803(c) which says that a person affected by a statutory stay imposed may initiate a proceeding before the board to modify, vacate or clarify the extent of the statutory stay. So we're simply asking that the rule close the loop and incorporate in the rulemaking what the statute already allows for.

And I'm happy to answer any questions.

MR. VANDERGRIFF: Any questions of Ms.

Phillips?

2.

(No response.)

MR. VANDERGRIFF: Thank you very much.

MS. PHILLIPS: Thank you.

MR. VANDERGRIFF: With that, I will submit the matter to the board.



MR. GILLMAN: For discussion?

MR. VANDERGRIFF: We need a motion and then you have discussion on that motion, and if there is no motion, then we'll continue questions.

MR. GILLMAN: It's one-sided. In other words, if you have a right to appeal to the board on a cease and desist order that was granted, but there's no right on the other side, and she's saying, is my understanding, it provides for that in the statute. Is that correct? That's what she's saying, I don't know whether that's right or wrong. I agree with what she is saying on that particular issue that is should be both sides.

MR. VANDERGRIFF: It's actually two different issues, but I will let Mr. Bray address them both

MR. BRAY: If you agree with her, with the TADA position, then you would want to incorporate her proposed version of 314(j) about cease and desist orders in which she has language which would allow for either the appeal of a denial or a grant, and you just incorporate that into your motion. And as the chairman pointed out, that's just one issue.

MR. GILLMAN: But the first issue that TADA addressed they seem to be happy with so I don't think we need to address that.

MR. BRAY: But there's a third issue.



1	MR. VANDERGRIFF: If memory serves me correct,
2	there's one and there's two more, that's what I was
3	referring to.
4	MR. GILLMAN: 314(j), I think I can put that
5	into a motion. Now, what was the third one?
6	MR. BRAY: The third one has to do with 315
7	involving statutory stays, and TADA has submitted language
8	on that as well in their written comments to subsection
9	(c). It reads: "A person affected by a statutory stay
10	imposed by Occupation Code 2301 may initiate a proceeding
11	before the board to modify, vacate or clarify the extent
12	and application of the statutory stay." That would be the
13	language the association supports.
14	MR. GILLMAN: Did the Independent Dealers weigh
15	in on this?
16	MR. BRAY: Not exactly, no.
17	MR. GILLMAN: Could I ask your opinion just
18	what you think about that, Jim?
19	MR. CAMPBELL: Well, my understanding is they
20	don't have any issue to it. I think they've addressed it
21	or looked at it, if I'm not mistaken, they've addressed it
22	and looked at it and don't have any disagreement with it.
23	MR. GILLMAN: With what Ms. Phillips is
24	proposing.



MR. CAMPBELL: Right.

1	MR. GILLMAN: Well, then I move that we accept,
2	with the exception of 314(j) and change it to the language
3	that the auto industry is requesting and we do the same on
4	the statutory stay.
5	MR. CAMPBELL: I would second.
6	MR. VANDERGRIFF: We have a motion and a
7	second. Do we have any discussion?
8	(No response.)
9	MR. VANDERGRIFF: I would just like to note
10	that both of these two actions, if done, will continue to
11	increase the workload of this board in hearing appeals, if
12	you will, of orders, or hearing them in the first place.
13	MR. WALKER: I have a question for Ms.
14	Phillips. Do we have any idea about how many of these
15	cases might be out there?
16	MS. PHILLIPS: I'm sorry. Are you asking about
17	the number of people that might appeal a ruling on a cease
18	and desist or a statutory stay?
19	MR. WALKER: Yes. For one, has it ever
20	happened?
21	MR. VANDERGRIFF: I think the first question is
22	do we have any statistics about how many statutory stays
23	are issued or how many cease and desist orders are issued.
24	MS. PHILLIPS: I'm sorry; I don't have any



I don't think that it's a lot but Brett and

25

statistics.

Molly and Carol may have a different idea.

MR. BRAY: We do keep that data, we don't have it in the room for you today, we can get it for you, but I can give you some sort of rough feel for it. Any case that comes under these statutes that's being litigated is subject to the possibility or even multiple possibilities, there might be multiple requests for cease and desist, multiple request of lifts of stay, multiple requests, so you can't come up with a specific number even per case because there could be multiple times per case.

Franchise cases, they vary across the board.

In a given fiscal year, we could have 20 to 40 to 60 cases in a year; and then there are enforcement cases and there could be 1,000, 1,200 petitions, maybe less, filed in a given year; and then there's the Lemon Law cases and there's another 200 or 300 of those. So any of those case have the potential.

MR. GILLMAN: But in practicality, they don't all make it to that stage, do they?

MR. BRAY: That's correct, and in practicality, very few involve statutory stays, very, very few. Cease and desist is another story, there's a significant number of those.

MR. WALKER: And that's what we're talking about is cease and desist.



MR. VANDERGRIFF: You might out to, just for clarification, distinguish for the board cease and desist and statutory stay because there is two issues.

MR. BRAY: I'll try. Let's start with statutory stay. There is a provision in the statute that says when somebody files a case involving one of the statutory provisions, everything is to be frozen and you are to conduct business just like it is until the case is decided.

So let's take if a manufacturer were to threaten to prevent a dealer from receiving incentive payments and the dealer files a complaint, the statutory stay kicks in, nobody has to do anything, the statutory stay kicks in to say until this matter is decided, you all continue to conduct business the way you've been conducting business.

Someone can come in later, for whatever reason, and say I need you to lift or modify this stay, who knows what it might be, the incentive program could have changed or it could be terribly burdensome, whatever, or it could be the other side arguing whatever, but the matter that could be involved in the lifting of a statutory stay can be on both sides, they can be complex and varied. But that's what that's about, it's about addressing the status quo while the litigation is going on.



The other thing is a cease and desist order and this happens in enforcement cases but it can happen in franchise cases just as easily, and that's where one party to the litigation wants the other party to stop doing something or to be made to continue doing something while the case is going on which may be different than the status quo, and you would ask a decision-maker for an order ordering the other party to stop doing something to continue doing something until that time, until the case is finally decided. And when the case is finally decided, then all those interim things go away and become part of whatever that final order that the board decides is.

MR. WALKER: So cease and desist is not close your doors and don't operate until we resolve this, it's we don't want you selling blue cars maybe.

MR. BRAY: I can't say to you that that's true, it might be close your doors. I think there was one instance in all the years I've been familiar with it that there was such an order sought, and it was dissolved at the hearing the next week.

You have to have a hearing, if you get an immediate cease and desist order, you have to have a hearing within a very short period of time where both parties are present to discuss and present evidence on the issue.



1 MR. WALKER: And that goes before a SOAH judge? MR. BRAY: Yes, it does presently. 2 MR. WALKER: Well, it would still go before a 3 4 SOAH judge. Is that not correct? 5 MR. BRAY: Yes. MR. WALKER: But there's no appeal process to 6 7 the board at this point. Is that correct? 8 MR. BRAY: Well, there's two positions here. 9 The statute, as we read it and have always read it, is you can only appeal the granting, if somebody is made to close 10 their doors or to stop doing something, you can appeal 11 that, you cannot appeal the denial of it. 12 association's position is you should be able to appeal 13 14 either, whether granting or denying. 15 MR. GILLMAN: If I might say, 50 percent of that particular item we're already responsible for, now 16 17 they're just saying want to give us responsibility for the other side of it. 18 Isn't most of these, a lot of these 19 MR. RUSH: 20 that are in here right now cease and desist that we just 21 went over? MR. BRAY: You mean the Consent Agenda? 22 23 sir, there are quite a number of them that are cease and 24 desist, but of course, those are agreed to by the parties



and that's boilerplate language in those agreed orders and

typically what that says is -- I'll give you just a real simple example, a dealer fails to file their vehicle inventory tax on time several months in a row, the tax assessor-collector complains to us, we get involved and investigate and file a complaint, and then ultimately in reaching this agreed order between the dealer and the agency, one of the things that they agree to is to not do that anymore so they cease and desist from being late in filing their VIT anymore.

2.

MR. GILLMAN: Did we have a first and a second?

MR. VANDERGRIFF: Yes, you did. We're still in discussion.

MS. JOHNSON: I'd like to weigh in on the motion, I'm going to support the motion, and predominantly, although I know the staff says that the item 215.314(c) would slow case handling, I'm surprised since this is already permitted under the Occupations Code that it doesn't seem like it would be an issue since it's already allowable under the law, and so all this is doing is taking it into ours to correspond with the Occupations Code, so we already have the authority to do so, so that's why I'm going to support this motion.

MR. VANDERGRIFF: Do we have any other discussion on the motion?

(No response.)



MR. VANDERGRIFF: I will call for your vote. A yes vote is in support of the motion and just making sure to restate that, that is as presented except with two changes to that which would be in 215.314(j) reflecting cease and desist orders and 215.315(c) regarding statutory stays. So with that, a yes vote signifies approval.

Raise your right hand, please, voting yes for the motion.

(A show of hands.)

MR. VANDERGRIFF: There are five votes in favor. And those voting no, two votes against. So the motion carries five to two. Again, I forgot to mention Directors Marzett and Butler are absent.

With that, we'll move on to our last item on the agenda, which is 5.B.1, and that is the consideration of enforcement motion with respect to Wyly Franklin Sims, DBA Carl Sims and Sons.

Mr. Bray.

MR. BRAY: In the future, I suspect that your Enforcement director that Mr. Serna hires will be presenting these, but in this instance, this section contains a case where the dealer did not appear at a hearing, it's a default.

Under your rules, if the dealer does not appear at the hearing, the allegations in the petition are considered to be admitted. The Enforcement Section asked



1 SOAH to dismiss the case from the docket to save hearing money and now asks you to adopt the proposed default order 2 as the dealer did not participate. 3 4 MR. RODRIGUEZ: So move, Mr. Chairman. 5 MR. RUSH: Second. 6 MR. VANDERGRIFF: We have a motion for approval and a second, motion from Board Member Rodriguez and a 7 second from Mr. Rush. Any discussion? 8 9 (No response.) MR. VANDERGRIFF: I call for your vote. 10 None. A yes vote for approval, raise your right hand. 11 (A show of hands.) 12 MR. VANDERGRIFF: Motion carries unanimously of 13 14 those present; Directors Marzett and Butler are absent. 15 With that, before we adjourn the meeting, I do want to note that our next board meeting -- regularly 16 17 called board meeting will be at the Capitol. We have a conflict on that particular day; I believe it's July 8, 18 and the conflict is that the commissioners are meeting 19 20 that day here in the building, so Senator Carona over in the Senate has graciously offered to sponsor us meeting 21 space in one of their hearing rooms over there, so we'll 22 23 have that pleasure. And in addition, I want to make sure that the 24



public is aware that we do not yet have a date for that,

1	but based upon the presentation of the Strategic Plan and
2	the timing that it has to be presented, we will have a
3	specially called board meeting to approve that, so that
4	will be before July 2, and again, we'll keep you posted of
5	that date. Hope to find that here by tomorrow.
6	And with that, I would be pleased to entertain
7	a motion to adjourn.
8	MR. RUSH: I make a motion.
9	MR. GILLMAN: Second.
10	MR. VANDERGRIFF: Seconded. With that, all
11	those signifying, raise your right hand.
12	(A show of hands.)
13	MR. VANDERGRIFF: It's approved, we are
14	adjourned.
15	(Whereupon, at 12:51 p.m., the meeting was

concluded.)

CERTIFICATE

MEETING OF: Department of Motor Vehicles Board

4 LOCATION: Austin, Texas

DATE: June 10, 2010

I do hereby certify that the foregoing pages, numbers 1 through 73, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Motor Vehicles.

06/15/2010 (Transcriber) (Date)

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